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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,814	01/14/2002	Gary L. Schroeder	2336	6017
7590 12/10/2003 Robert S. Alexander Georgia-Pacific Corporation 1915 Marathon Avenue P.O. Box 899 Neehah, WI 54957-0899			EXAMINER TSOY, ELENA	
			ART UNIT 1762	PAPER NUMBER

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/051,814

Applicant(s)

SCHROEDER ET AL.

Examiner

Elena Tsoy

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1203.

- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

*Election/Restrictions*

1. Applicant's election with traverse of Claims 24-33 is acknowledged. The traversal is on the ground(s) that in contrast to 35 USC 121 statement that "independent and distinct" inventions can be restricted, the Examiner has only argued that inventions are distinct. This is not found persuasive because according to MPEP 808, establishing the fact that the inventions as claimed are **either** independent **or** *distinct* constitutes "Reasons for **Insisting** Upon Restriction".

The requirement is still deemed proper and is therefore made FINAL.

*Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 24-26, 28, 29, 31, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Rabasco et al (US 2002/0099113).

Pregozen discloses a method for making a moist wipe for delivering a cationic functional agent in an aqueous medium (See column 1, lines 10-15) to an animate or inanimate surface for a desired efficacy (See column 3, lines 21-22), which comprises forming a bonded non-woven web comprising cellulosic fibers (See column 4, lines 63-68) using non-woven binders (See column 5, lines 2-4), and adding about two to five times the dry weight of the web an aqueous imbuelement carrying a cationic functional agent such as polymeric cationic biocide having molecular weight of 1000-1400 (See column 3, lines 61-63) or monomeric cationic biocide such

as cetylpyridinium chloride (See column 7, lines 19, 27-35) at a concentration of about 0.03-0.24 % weight (active basis) of the aqueous composition (which is less than 6 milli-equivalents per liter) (See column 4, lines 10-13).

Pregozen fails to teach that an anionic surface charge of the web containing cellulosic fibers is not greater than 1.2 meq per kilogram (Claim 24); a non-woven binder contains non-ionic surfactant (Claims 26, 29); the monomeric cationic biocide is benzalkonium chloride (Claims 31, 32).

Rabasco et al teach that sufficient anionic character of non-woven binders inactivates cationic biocides (See [0030]). In other words, an anionic surface charge of the web containing cellulosic fibers is result-effective parameter.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the surface of the web containing cellulosic fibers in Pregozen for delivering cationic biocides with less than sufficient anionic character since Rabasco et al teach that sufficient anionic character of non-woven binders inactivate cationic biocides.

It is held that it is not inventive to discover the optimum or workable ranges of result-effective variables by routine experimentation. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). See also In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have determined the optimum values of anionic surface charge (including those of claim 24) in Pregozen in view of Rabasco et al through routine experimentation in the absence of a showing of criticality.

As to claims 26, 29, Rabasco et al further teach that non-woven binders (See [0020]) can be formulated as stable polymer emulsion using various surfactants such as non-ionic surfactant (See [0030]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formulated non-woven binders in Pregozen using non-ionic surfactant with the expectation of providing the desired stable polymer emulsion, as taught by Rabasco et al.

As to claims 31, 32, Rabasco et al teach that cetylpyridinium chloride is functionally equivalent to benzalkonium chloride for their use as cationic biocide (See [0024]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used instead of cetylpyridinium chloride biocide in Pregozen since Rabasco et al further teach that cetylpyridinium chloride is functionally equivalent to benzalkonium chloride for their use as cationic biocide, and the selection of any of these known material as cationic biocide in Pregozen would be within the level of ordinary skill in the art.

4. Claims 27, 30, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Rabasco et al (US 2002/0099113), further in view of Mochizuki et al (US 4,675,347).

Pregozen in view of Rabasco et al, as applied above, fail to teach that non-woven binders can be formulated using cationic surfactant (Claims 27, 30); the monomeric cationic biocide is benzethonium chloride (Claim 33).

As to claims 27, 30, Mochizuki et al teach that a cationic surfactant and/or nonionic surfactant is suitable for formulating stable non-woven binders (See column 3, line 66) containing cationic antimicrobial agent (See column 7, lines 48-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a cationic surfactant and/or nonionic surfactant in formulating non-woven binders of Pregozen in view of Rabasco et al since Mochizuki et al teach that a cationic surfactant and/or nonionic surfactant is suitable for formulating stable non-woven binders (See column 3, line 66) containing cationic antimicrobial agent.

It is held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious); *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

As to claim 33, Mochizuki et al teach that benzethonium chloride is suitable for the use as cationic biocide in aqueous compositions (See column 5, lines 55, 59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used benzethonium chloride as cationic biocide in Pregozen in view of Rabasco et al since Mochizuki et al teach that benzethonium chloride is suitable for the use as cationic biocide in aqueous compositions.

### *Conclusion*

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (703) 605-1171. The examiner can normally be reached on Mo-Thur. 9:00-7:30, Mo-Thu.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for all communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Elena Tsoy  
Examiner  
Art Unit 1762

December 4, 2003